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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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11 STEPHEN LEE CHOATE,

12 Petitioner,

13 vs.

14 NEVADA ATTORNEY GENERAL, *et al.*,

15 Respondents.
16

Case No. 2:16-cv-00813-RFB-GWF

ORDER

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18 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254
19 by a Nevada state prisoner. On April 18, 2016, the Court entered an order and judgment dismissing
20 the action without prejudice. (ECF Nos. 7 & 8). Petitioner had failed to file a properly completed
21 application to proceed *in forma pauperis* with all required attachments. (ECF No. 7). Pursuant to
22 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must attach to his pauper application
23 both an inmate account statement for the past six months and a properly executed financial
24 certificate.

25 On January 24, 2017, the Court held a hearing at which it vacated the order of dismissal and
26 judgment. (ECF No. 38). The Court ordered the above-captioned case consolidated with Case No.
27 2:16-cv-01093-RFB-CWH. The instant case, being the first filed case, was designated as the lead
28 case. (*Id.*). Petitioner challenges the same state court conviction in both cases. The Court directed

1 petitioner to submit the paperwork required for a complete *in forma pauperis* application in this
2 case. (*Id.*). On February 16, 2017, petitioner filed a revised application to proceed *in forma*
3 *pauperis*. (ECF No. 40). The application includes an inmate account statement and a properly
4 executed financial certificate. Upon review of the application and good cause appearing,
5 petitioner's application to proceed *in forma pauperis* is granted.

6 Petitioner has filed motions prior to and subsequent to the Court's January 24, 2017 hearing.
7 Several months prior to the Court's hearing, petitioner filed a combined motion for the appointment
8 of counsel and for an evidentiary hearing. (ECF No. 11 & 12). On May 12, 2016, petitioner filed a
9 "motion for leave to explain petition." (ECF No. 14). Since the filing of petitioner's revised
10 application to proceed *in forma pauperis*, petitioner has filed several more motions. Petitioner has
11 filed three motions to compel documents (ECF Nos. 37, 47 & 48) and two motions for the
12 production of documents (ECF Nos. 46 & 49). Additionally, on March 14, 2017, petitioner filed a
13 motion for a certificate of appealability. (ECF No. 52). On March 21, 2017, petitioner filed an
14 "emergency motion for judicial examination." (ECF No. 55).

15 The Court has reviewed all of petitioner's motions in this case. The problem is that there is
16 no operative habeas corpus petition in this action or in 2:16-cv-01093-RFB-CWH. As indicated in
17 this Court's order of March 20, 2017, in 2:16-cv-01093-RFB-CWH, it appears that petitioner sought
18 to file an amended petition, but he failed to do so in the proper manner. The petition filed in the
19 instant case was not submitted on the Court's approved form. (ECF No. 1-1). To the extent that
20 petitioner sought to file an amended petition in other documents, he has not used the Court's form
21 petition. The Local Rules of Court require petitioners appearing in *pro se* to file their habeas
22 petitions on the Court's approved form. Local Rules of Special Proceedings 3-1 ("a petition for a
23 writ of *habeas corpus*, filed by a person who is not represented by an attorney, shall be on the form
24 provided by this court."). The Court's form habeas petition contains questions that require detailed
25 answers that the Court needs before it can determine whether petitioner states a viable habeas
26 corpus claim. This Court must conduct a preliminary review of the petition to determine whether
27 the petition should be dismissed or whether the State will be directed to respond to the petition. *See*
28 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

1 Additionally, any motion seeking the appointment of counsel requires that the Court review the
2 petition, including details such as the nature of petitioner's conviction and the structure of
3 petitioner's prison sentence. Moreover, any other type of motion sought by petitioner cannot be
4 granted in the absence of an operative petition. As such, the motions mentioned above are denied
5 without prejudice. Petitioner may file new motions, as appropriate, after he files an amended
6 petition in this action.

7 The Court will direct the Clerk of Court to provide petitioner with the approved form for
8 filing an a *pro se* petition for a writ of habeas corpus. In filing an amended petition, petitioner must
9 comply with the instructions to the form petition, including rules regarding the attachment of
10 additional pages. The Court notes that petitioner previously submitted a 113-page prolix document
11 at ECF No. 4 in 2:16-cv-01093-RFB-CWH. Petitioner filed a similar 606-page document at ECF
12 No. 6 in the instant case. The Court has no duty to hunt through voluminous pages of allegations to
13 glean what claims petitioner actually wishes to raise. *McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th
14 Cir. 1996). Further, petitioner shall not attach to his amended petition documents comprising the
15 state court record. (*See* Rule 5 of the Rules Governing Section 2254 Cases in the United States
16 District Courts) (respondents shall file relevant portions of state court record). The amended
17 petition must concisely set forth those claims that petitioner believes might be a basis for granting
18 relief from his criminal conviction or sentence. Finally, petitioner is reminded that his amended
19 petition must be filed in the instant case, and should not be filed in 2:16-cv-01093-RFB-CWH.

20 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma pauperis*
21 (ECF No. 40) is **GRANTED**.

22 **IT IS FURTHER ORDERED** that petitioner's motions, at ECF Nos. 11, 12, 14, 37, 46, 47,
23 48, 49, 52, and 55 are **DENIED WITHOUT PREJUDICE** to seeking such relief in future motions.

24 **IT IS FURTHER ORDERED** that the Clerk of Court shall send petitioner one copy of the
25 approved form for filing a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254,
26 and one copy of instructions for the same.

27 **IT IS FURTHER ORDERED** that, within **forty-five (45) days** from the date of the entry
28 of this order, petitioner **SHALL FILE** an amended habeas petition in this case, 2:16-cv-00813-

1 RFB-GWF. Petitioner's failure to file an amended petition on the approved form provided by this
2 Court may result in the dismissal of this action.

3 **IT IS FURTHER ORDERED** that petitioner shall file all future pleadings and motions in
4 the instant case, 2:16-cv-00813-RFB-GWF. Petitioner shall file no further pleadings or motions in
5 2:16-cv-01093-RFB-CWH.

6 DATED this 29th day of March, 2017.

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10 RICHARD F. BOULWARE, II
11 UNITED STATES DISTRICT JUDGE
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